

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 2 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AS AMENDED, BY ADDING A NEW SECTION 2-5 THEREBY AUTHORIZING THE CITY MANAGER AND OTHER DESIGNATED CITY OFFICIALS TO EXECUTE CERTAIN CONTRACTS, CHANGE ORDERS, AND INTERLOCAL AGREEMENTS NOT TO EXCEED \$50,000.00; FURTHER ADDING A NEW SECTION 2-6 THEREBY AUTHORIZING THE CITY ATTORNEY TO INSTITUTE LAWSUITS, RETAIN OUTSIDE LEGAL COUNSEL, SETTLE AND PAY CERTAIN LAWSUITS, CLAIMS, FINES, PENALTIES, SANCTIONS AND SEVERANCE; PROVIDING A REPEALER CLAUSE AND SPECIFICALLY REPEALING RESOLUTION NOS. 40-64, 22-87, 43-88, 29-95, 38-2000, 26-2005, 57-2006, 39-2008 AND 47-2016 AS WELL AS ORDINANCE NOS. 2218, 2898, 3441, 3884 AND 4412 IN THEIR ENTIRETY; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, pursuant to Article VIII, "City Manager," of the Charter of the City of Mesquite (the "City"), the City Manager is the administrative head of city government and the City Council is empowered to delegate authority to carry out the attendant responsibilities in that office; and

WHEREAS, the City Council has previously delegated, by resolution, policy or ordinance, the approval and execution of certain agreements and payments related to approved programs, activities and budgeted items in order to facilitate the City Manager's duties in administration and operation of the City; and

WHEREAS, the City Council desires to update and clarify those delegations and to provide additional authority to the City Manager and staff, in specified circumstances; and

WHEREAS, there is currently no description of authority delegated to the City Attorney in the Mesquite Charter or the Mesquite Code of Ordinances; and

WHEREAS, the City Council desires to assemble and codify delegations to the City Manager and City Attorney in the Mesquite City Code for convenience and clarity.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter 2 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by adding new Sections 2-5 and 2-6 to read as follows, in all other aspects said Code, Chapter and Section to remain in full force and effect:

Sec. 2-5. Delegation of authority to City Manager and other City officials.

(a) *Signing contracts, easements, licenses and liens.*

- (1) The City Manager is authorized to sign all contracts approved by the City Council and, unless otherwise provided by the City Council, to execute all other documents necessary to consummate the transactions contemplated by all council-approved contracts.
- (2) For any contract requiring a City expenditure of up to \$50,000.00, the City Manager is authorized to approve and sign the contract without obtaining City Council approval of the contract provided that:
 - a. Funds have previously been allocated in the City's annual budget and are available for the purpose of the contract; and
 - b. City Council approval of the contract is not otherwise required by law.
- (3) The City Manager is authorized to:
 - a. Obtain, grant and execute utility, drainage, access and other easements, licenses, or rights-of-way acquisitions necessary in connection with budgeted City projects or to advance public purposes provided any expenditure does not exceed \$50,000.00; and
 - b. Execute and release liens on behalf of the City, and may assign this duty to a designee if authorized by state law.
- (4) The following City officials are authorized to sign the following designated contracts provided they are approved as to form by the City Attorney:
 - a. The Director of Parks and Recreation is authorized to execute agreements for the use of a park facility not exceeding a term of 30 days.
 - b. The Managing Director of the Mesquite Arts Center is authorized to execute agreements for the use of the Mesquite Arts Center facility not exceeding a term of 30 days.
 - c. The Chief of Police is authorized to approve and execute wrecker rotation list agreements.
 - d. The Airport Director is authorized to approve and execute hanger leases in accordance with City policy.
 - e. The Library Director is authorized to approve and execute annual subscriptions and agreements for books, papers and other library

materials provided no expenditure exceeds \$15,000, and funds have previously been allocated in the City's annual budget and are available for that purpose.

- f. City staff, working through the Manager of Purchasing, is authorized to purchase a good by purchase order, provided that the total expenditure for the subject good by all departments does not exceed \$50,000.00 in any fiscal year.
- g. A member of City staff may approve and execute agreements if expressly identified as authorized to do so by ordinance or resolution.

(b) *Administering contracts.* Unless otherwise provided by the City Council in connection with a particular contract, the City Manager is authorized to administer approved and executed contracts on behalf of the City including, but not limited to, taking the following actions:

- (1) Providing notices required or permitted by a contract;
- (2) Approving or denying any matter in a contract that requires the consent of the City;
- (3) Approving or denying the waiver of performance of any covenant, duty, agreement, term or condition of a contract;
- (4) Exercising any rights and remedies available to the City under a contract;
- (5) Executing notices, amendments, approvals, consents, denials and waivers authorized by this subsection; and
- (6) Approving amendments to a contract if any expenditure under the amendment, together with all previous expenditures approved by the City Manager, do not exceed \$50,000.00.

(c) *Approving change orders and other supplemental agreements.*

- (1) Except as otherwise provided in this subsection, the City Manager shall have the authority to approve contract change orders and other supplemental agreements that increase or decrease a contract price by up to \$50,000.00, if any expenditure, together with all previous expenditures approved by the City Manager, do not exceed \$50,000.00 and if necessary to:
 - a. Make changes in plans or specifications; or
 - b. Decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished.

- (2) For manager-approved procurement contracts authorizing an expenditure of \$50,000.00 or less, a change order is prohibited if the amount of the change, together with all previous expenditures under the contract, exceed \$50,000.00.
- (3) The City Manager may approve a change order that increases a contract's price only to the extent that funds for the project in question are available, provided that if the contract is governed by the provisions of Local Government Code, Chapter 252, as amended ("Chapter 252"), the total of all change orders may not exceed the original contract price by more than 25 percent.
- (4) If the City Manager is approving a decrease in the contract price by more than 25 percent (but within the delegated \$50,000.00 maximum), consent of the contractor must first be obtained as required in Chapter 252.
- (5) Before approval, the City Manager shall satisfy himself that the following personnel have reviewed and approved the issuance of a change order:
 - a. *Director of initiating department.* The director of the department initiating the contract shall advise the City Manager whether the proposed change is in keeping with the overall purpose or scope of the project. It is the responsibility of the initiating director to obtain the review and approval of the Managing Director of Financial Services and to submit the same to the City Manager for final approval.
 - b. *Managing Director of Financial Services.* The Managing Director of Financial Services shall advise the City Manager as to the availability of unallocated funds for the contract in question.
 - c. *Manager of Purchasing.* The Manager of Purchasing shall ensure that the purchase order and bid documents are amended to reflect the revised amount, if applicable.
 - d. *City Attorney.* The City Attorney shall advise the City Manager as to whether the statutory requirements for the issuance of a change order have been met.
- (6) The City Manager may delegate authority to a director initiating a contract to approve change orders, in an emergency, for the purposes and amounts provided for above, even though formal review and approval by the personnel listed in Sections 2-5(c)(5) have not been obtained. Prior to approving an emergency change order, the initiating director, in a written memorandum to the City Manager, shall set forth:

- a. The nature of the emergency requiring the requested change order which prevents the normal review and approval provided for in this subsection;
 - b. That the proposed change order is dictated by sound principles and is cost effective;
 - c. That the proposed change is consistent with the scope and purpose of the project;
 - d. That sufficient funds are available to cover the change order; and
 - e. That the City Attorney has determined that legal requirements for issuing a change order have been met.
- (7) It is the responsibility of the department initiating a construction contract to ensure that contingency funds are included in the amount requested for approval when the City Council awards the construction contract.
- (d) *Determining contracting method and delivery procedure.* The City Manager or manager's designee is authorized to determine which contracting method and delivery procedure provided under Chapter 252 of the Texas Local Government Code, as amended, or Chapter 2269 of the Texas Government Code, as amended, shall provide the best value for the City for the purchase of construction services.
- (e) *Signing interlocal agreements for cooperative purchasing.* Without first obtaining City Council approval, the City Manager is authorized to enter into and sign interlocal agreements between the City and any governmental entity authorized to enter into any interlocal agreement, pursuant to Chapters 271 and 791 of the Texas Government Code, as amended, for cooperative purchasing if the interlocal agreement does not require an expenditure in excess of \$50,000.00. The City Manager shall provide written notification to the City Council of all manager-approved interlocal agreements. All other interlocal agreements shall be approved by the City Council.

Sec. 2-6. Delegation of authority to City Attorney.

- (a) *Instituting lawsuits.* The City Attorney is authorized to institute lawsuits on behalf of the City. The City Attorney shall provide written notification to the City Council of all lawsuits instituted.
- (b) *Hiring outside legal counsel.* The City Attorney is authorized to retain outside legal counsel to assist in the representation and defense of the City, its officers and employees, provided the engagement agreement does not exceed \$50,000.00 in any fiscal year.
- (c) *Settlement and payment of lawsuits, claims, fines, penalties, sanctions and severance.* The City Attorney is authorized to pay or deny payment in settlement

of lawsuits, claims, fines, penalties and sanctions against the City and its employees, and to approve severance pay in avoidance of a claim against the City, in an amount that does not exceed \$75,000.00. The City Attorney shall provide written notification to the City Council of all settlements and payments exceeding \$50,000.00.

SECTION 2. That Resolution Nos. 40-64, 22-87, 43-88, 29-95, 38-2000, 26-2005, 57-2006, 39-2008 and 47-2016 as well as Ordinance Nos. 2218, 2898, 3441, 3884 and 4412 are hereby repealed in their entirety as of the date of this ordinance. If any other ordinances or portions thereof of the City contain provisions in conflict with this ordinance, the portions in conflict are hereby repealed and the portions not in conflict herewith shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 20th day of March, 2017.

Stan Pickett
Mayor

ATTEST:

APPROVED:

Sonja Land
City Secretary



B. J. Smith
City Attorney